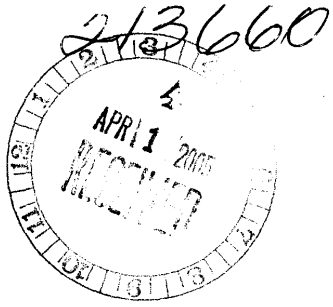

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 656
MOTOR CARRIER BUREAUS – PERIODIC REVIEW PROCEEDING

REPLY COMMENTS OF PACIFIC INLAND TARIFF BUREAU, INC.

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Dated and Filed: April 1, 2005

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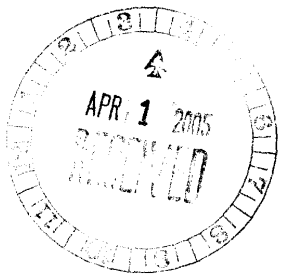

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REPLY COMMENTS OF PACIFIC INLAND TARIFF BUREAU, INC.

Pacific Inland Tariff Bureau, Inc. (PITB) files these Reply Comments in response to the Comments submitted jointly on behalf of National Small Shipments Traffic Conference, Inc., and National Industrial Transportation League (hereinafter "NASSTRAC/NITL" or "Shipper Associations"). Attached hereto is the Verified Statement of Mr. Scott Edwards which responds to the Comments of NASSTRAC/NITL. Comments have been filed by other motor carrier bureaus in support of continued immunity.[1] Only NASSTRAC/NITL have submitted substantive comments in opposition to the continuation of STB approval of the ratemaking agreements that are the subject of this proceeding.[2]

NASSTRAC/NITL argue that antitrust immunity for motor carriers should be eliminated or restricted. As we explain, infra, their arguments are the same as those

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[1] EC-MAC Motor Carriers Service Assoc., Inc., Household Goods Carriers Bureau Committee, Machinery Haulers Assoc., Middlewest Motor Freight Bureau, Inc., National Classification Committee, Nationwide Bulk Trucking Assoc., Inc., North American Transportation Council, Inc., Rocky Mountain Tariff Bureau, Inc., Southern Motor Carriers Rate Conference, Inc., and Western Motor Tariff Bureau, Inc.

[2] A number of shippers in the lighting industry have filed comments in opposition to National Classification Committee Agreement. However, those comments do not specifically address any of the bureau ratemaking agreements.

advanced to and recently rejected by the Board in the last review cycle addressing collective ratemaking and commodity classification in Section 5a Application No. 118 (Sub-No. 2), et al., EC-MAC Motor Carriers Service Association, et al., served November 20, 2001 and March 27, 2003. (EC-MAC).

NASSTRAC/NITL's position is based on a philosophical disagreement with Congress over whether antitrust immunity should exist. Congress, of course, has clearly and consistently expressed its position on the issue. Beginning in 1948 when it initially authorized antitrust immunity for collective rate and classification actions through the present, Congress has examined, re-examined, and reaffirmed its approval of immunity. Congress abolished the Interstate Commerce Commission in 1995, but nevertheless continued the effectiveness of collective ratemaking and classification agreements while transferring oversight authority to the Surface Transportation Board. See ICC Termination Act of 1995, P.L. 104-88, § 103, December 29, 1995.

Subsequently, in the midst of the STB's consideration of continued immunity, Congress again examined the subject and expressed its approval of collective ratemaking in the Motor Carrier Safety Improvement Act, Pub.L. 106-159, December 9, 1999. The STB was requested to hold its administrative proceeding in abeyance while Congress took up the issue. As a result, Congress not only continued collective ratemaking, it also extended the cycles for STB review to 5 years. Most recently, in 2003, Congress amended the collective ratemaking provisions of the Act by removing the prohibition against the Board taking any action that would permit the establishment of nationwide collective ratemaking authority. Pub.L. 108-7, Div. 1, Title III, § 354, Feb. 20, 2003.

Congress has fine-tuned these provisions on several occasions over the years and has continued to authorize collective ratemaking for nearly 60 years. The Shipper Associations have refused to accept this determination. They have not, however, presented any facts or circumstances to warrant the elimination or further limitation of immunity.

Certain arguments relied upon by NASSTRAC/NITL for elimination of immunity are erroneous. For example, they assert that shippers have no or limited recourse to challenge collectively established motor carrier rates. Comments, pp. 8-9. To the contrary, the statute is explicit in its reasonableness requirements and the remedies for violations thereof. Section 13701 (a)(1)(c) requires that all collectively established rates, rules, and classifications be reasonable. The Board's powers over bureau actions not in the public interest are broad and far reaching. Section 13703 (a)(5). In addition, private remedies and the procedures to pursue them exist for shippers to challenge rates before the Board and in the courts. 49 U.S.C. §§ 14701, 14704, and 49 C.F.R. Parts 1130 and 1132.[3]

Notwithstanding their inability to demonstrate any inadequacy in the structure of the Act, the Shipper Associations urge that the Board should act to prevent or deter abuse, rather than require shippers to rely on the remedial provisions of the statute itself. However, there is no evidence of abuse in the collective ratemaking system. Nor is there any evidence that existing statutory remedies are inadequate. Unquestionably, the Board

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[3] NASSTRAC/NITL cite Miller v. WD-40, 29 F.Supp.2d 1040 (D. Minn. 1998) for the proposition that there is no recourse to the STB to challenge the reasonableness of motor carrier rates (Comments, p. 8). This is an odd contention. In refusing to refer the shipper's claim of rate unreasonableness to the STB, the Court noted that the sole issue in the case was rate applicability - not unreasonableness. 29 F. Supp.2d at 1043. Further, the Court acknowledged that the reasonableness of collective tariffs is within the STB's jurisdiction, but held that the shipper failed to meet its burden for referral. Id., 1045. In short, the Court's refusal to refer the case to the Board turned on the particular facts of that case.

is authorized to change or impose additional conditions on an agreement "when necessary to protect the public interest". 49 U.S.C. 13703 (c). However, no circumstances have been shown to exist to warrant the imposition of additional conditions.

The main theme of the NASSTRAC/NITL's opposition centers on the bureau class rate level. But this argument is the proverbial "red herring" in view of the individual and bureau discounts available to all shippers. In any event, any challenge to the existing rate levels maintained by the bureaus should be brought by complaint where a factual record can be developed addressing issues that are relevant to the rates in question.

The rate conditions that the Shipper Associations urge be attached to the continued approval of the bureaus' agreements have previously been considered and rejected by the Board. Their request for prescription of a mandatory minimum discount was refused in the last review and is still ill-founded as a matter of law. The Board's authority to prescribe rates requires a finding that the existing rates are unlawful in violation of Section 13701 (a). See Section 13701 (b). No such finding has been made.

NASSTRAC/NITL also ignore the fact that discounts are individually negotiated and established. Imposition of a mandatory bureau minimum discount rule would supercede individual discounts, foreclose a carrier's right of independent action, and disrupt existing relationships. It was essentially for these reasons that the Board rejected shippers' calls for a mandatory bureau discount in EC-MAC. The Board stated that it had no desire to interfere with the arm's length transactions negotiated between carriers and shippers. See EC-MAC, served November 20, 2001, p.7. The Board also explained that it would be inappropriate to require a minimum discount at any particular level given the

broad range of rates and discounts throughout the industry that reflect the wide variety of competitive circumstances. Id.

The Board's rationale continues to be appropriate today. While the Shipper Associations request the Board to reconsider its position, they have not demonstrated any change in circumstances to warrant a different conclusion than it reached in EC-MAC. NASSTRAC/NITL assert that the current system has not worked because some carriers are offering lower discount percentages than their bureau's minimum discount percentage. That is not the case with PITB where customers of PITB carriers are receiving discounts from 40 to 86 percent. (V.S. Edwards). Moreover, carriers and shippers negotiate individual discounts that are tailored to that shipper's particular requirements and are negotiated to give the shipper the best deal for those requirements. Consequently, the Associations' attempt to simply compare percentages is meaningless.

The Shipper Associations also ask the Board to reconsider its refusal to adopt a rebuttable presumption of unreasonableness for bureau class rates. Not surprisingly, they present no facts or argument to warrant adoption of such an unusual rule. In fact, it turns the entire statutory scheme on its head. Their suggestion would convert rates that were lawfully adopted, never challenged, and currently in effect into rates that are presumptively unlawful. Not only would it retroactively expose carriers to liability on past shipments, it would reverse the burden of proof. The statute has always attached a presumption of lawfulness to rates in effect and places the burden of demonstrating unlawfulness on the party challenging them. Louisville N.R. Co. v. United States, 238 U.S. 1, 11, 35 S. Ct. 696 (1915). To that extent, there has been no relevant change in the law.

The Shipper Associations seek to create this unique presumption of unlawfulness without challenging a single rate or its application to a single shipment. This would circumvent the requirements of 49 U.S.C. § 14701(b) and 49 C.F.R. Part 1130. In addition, application of this presumption to a rate level that only serves as a benchmark would undermine the benchmarking system. Plainly, the suggested presumption is contrary to law and unwise as a matter of policy.

Continuing their attack on the bureau rate level, NASSTRAC/NITL urge that antitrust immunity for collective action on general rate increases be limited to cost recovery. (Comments, pp. 12-13). Again, the Shipper Associations ask the Board to go far beyond the limitations and restrictions imposed by Congress, but provide no facts or circumstances that would warrant such a change in the conditions imposed in the carriers' agreement.

Like their other arguments, this suggestion is contrary to the statute. In authorizing the Board to impose reasonable conditions on collective ratemaking agreements, Congress directed that any condition further the National Transportation Policy set forth in Section 13101. See 49 U.S.C. § 13703 (a) (3). Among other things, that policy expressly seeks to enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions. 49 U.S.C. § 13101 (a) (2) (F). The condition advocated by the Shipper Associations to prohibit general increases based on revenue need flies in the face of this directive. Congress' authorization of collective ratemaking in section 13703 (a)(3) specifically contemplates general increases based on carrier costs and revenue need including "adequate profits." Historically, revenue need sufficient to enable carriers to generate a reasonable profit was

always a relevant factor in determining the reasonableness of a collective ratemaking action.[4] NASSTRAC/NITL's suggested condition is inconsistent with and contrary to law.

The Shipper Associations also contend that the Board should require more transparency in the bureaus' operations by providing notice of proposed class rate increases, as well as the opportunity for shippers to comment and/or attend meetings at which rate actions are discussed. Comments, p. 13. These requirements already exist in bureau agreements and have since 1980. See Ex Parte No. 297 (Sub-No. 5), Motor Carrier Rate Bureaus, 364 I.C.C. 464. As explained in the attached statement, PITB strictly complies with these requirements and also provides notice of proposed general increases on its website prior to the meeting as well as notice of the action taken thereafter. Shippers have always been invited to attend and comment at the meetings.[5] The comments of the Shipper Associations suggesting lack of notice, closed meetings, or the inability to comment are surprising. Shippers in fact attend PITB's GRC meetings and comment.

The Shipper Associations suggest that bureau carriers get away with "stealth" rate increases that shippers never know about. Such a contention is hardly credible in view of the sunshine requirements governing bureau rate actions. Bureau increases are well publicized as explained in Mr. Edwards' statement. It would be very difficult, if not impossible, for a bureau carrier to keep a shipper in the dark about a rate increase.

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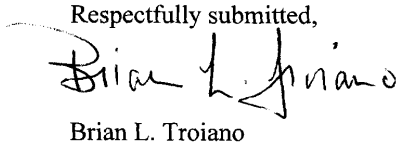
[4] Prior to the 1995 Termination Act, the statute specifically included "reasonable profit" as an element of the reasonableness of a collectively established general rate increase. Former 49 U.S.C. § 10701 (e). Furthermore, revenue need is still included as a relevant consideration in the Board's regulations applicable to general revenue proceedings when tariffs must be filed. 49 C.F.R. Part 1139.

[5] The Shipper Associations imply that bureaus other than SMC do not allow shippers to attend and be heard at meetings. See Comments, p. 6, note 4. Without speaking for any other bureaus, PITB has always afforded shippers this opportunity.

CONCLUSION

The comments of NASSTRAC/NITL reflect the same arguments they advanced in the recent review cycle just concluded in EC-MAC. The Board properly rejected those contentions then and should do so now. The Shipper Associations have not set forth any new or changed circumstances that would warrant a change in the Board's position or would otherwise justify the imposition of any condition urged by NASSTRAC/NITL.

Respectfully submitted,



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Dated and Filed: April 1, 2005

BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE NO. 656
MOTOR CARRIER BUREAUS –
PERIODIC REVIEW PROCEEDING

VERIFIED STATEMENT
OF
SCOTT EDWARDS

My name is Scott Edwards. I am the Executive Director of Pacific Inland Tariff Bureau, Inc. (PITB) and I previously submitted a statement in this proceeding in support of our request that immunity be continued. I have reviewed the statement submitted jointly on behalf of the National Small Shipments Traffic Conference and the National Industrial Transportation League (NASSTRAC/NITL) and offer the following comments in response.

The shippers' statement implies that motor carrier rate bureaus do not allow shippers to attend or express their views at meetings where general rate increases are considered by the carriers. Comments, p. 6. They request the Board to impose conditions requiring notice of rate meetings and an opportunity for shippers to attend and comment. Comments, p. 13.

These statements reflect a lack of understanding of the existing bureau process. Pursuant to the Rules of Procedure in our Agreement, PITB provides no less than 15 days notice of meetings at which rate proposals are considered. Our Agreement also requires that such meetings be open to the public and that any interested person be allowed to

present their views orally or in writing. Our Agreement also provides that such persons may participate individually through their organization. We steadfastly adhere to these requirements.

These provisions were imposed by the Interstate Commerce Commission following the 1980 Motor Carrier Act. They have been included in PITB's Agreement since the 1980's as required by the ICC. The shippers' suggestions that these requirements are not observed are simply wrong. In addition to mailing docket bulletins to all subscribers, including of course, shipper subscribers, we post notice of our meetings on our website. We also publish notice in the Seattle Times and the Seattle Post-Intelligencer. I would add here that shippers routinely attend our meetings and offer comment. Consequently, to the extent that the shipper associations contend that PITB is not conducting its rate meetings out in the open, they are incorrect.

The shippers' contentions concerning "stealth" rate increases are likewise without merit. In addition to the notices that we provide, industry trade publications often publish accounts of increases that have been adopted. Consequently, proposed and concluded ratemaking actions are well publicized. This information is public and readily available.

Most shippers are therefore well aware of any proposed rate increases and they take steps to negate or offset the impact by adjusting their individual discounts or by freezing the benchmark level through contractual provisions. In view of the sunshine requirements governing rate bureaus discussed above, it is easier for a carrier acting independently to hide its rate increases than it is for a bureau carrier.

NASSTRAC and NITL also argue that a mandatory minimum discount should be imposed because the existing voluntary system is not working. (Comment, p. 12). This

contention is misinformed. PITB's carriers offer discounts ranging from 40 percent to 83 percent according to last year's report submitted to the STB. This year's filing will reflect a range from 40 to 86 percent.[1]

It is also important to understand that the bureau discount rule reflects a determination by the carriers that it is inappropriate to interfere with the existing arrangements individually negotiated by carriers and their customers. The discount percentages offered by individual carriers reflect the particular circumstances of each shipper and constitute each carrier's exercise of its right of independent action.

NASSTRAC and NITL urge that a presumption of unreasonableness attach to any bureau class rate level. (Comments, p. 11). This suggestion reflects a lack of understanding of collective ratemaking and confuses lawfulness with market competition. PITB's rate structure was developed, maintained and justified on the basis of carrier costs and revenue need under the tight controls and oversight of the ICC. When the ICC was abolished and most tariff filing eliminated, we did not toss aside the existing rate structure or the factors relied upon for its maintenance. The statute still requires that collectively established rates be reasonable. We continue to base general increases on traditional factors to produce a rational and reasonable rate level. The fact that discounting is a standard industry practice reflects a competitive market, but does not address the lawfulness of the benchmark level. The statute provides a means to challenge existing rates and PITB's rate level has not been found to be unreasonable. In short, there is no basis for the presumption suggested by the Associations.

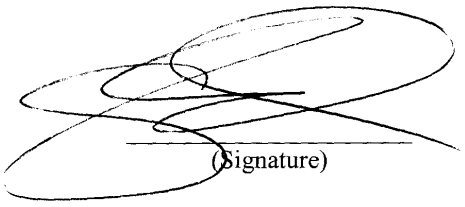
[1] PITB's minimum discount rule was changed to provide for a 40 percent discount in 2001. Initially, it was set at 35 percent.

Along the same lines, the shippers argue that bureau carriers should be prohibited from taking collective action on increases based on any considerations other than carrier costs. This would be a mistake. The statute and ICC regulations have traditionally included carrier revenue requirements sufficient to cover expenses and depreciation, and an adequate profit as elements of reasonableness in collective ratemaking. Likewise, the National Transportation Policy, which is specifically referenced in the collective ratemaking provisions of the statute, still provides that adequate carrier profit is an integral element of a competitive and efficient transportation system to be promoted. Congress wisely recognized the importance of the carriers' financial health to a stable motor carrier industry. The numerous carrier bankruptcies that commenced in the 1980's and continue to this day should serve as reminder and incentive to ensure that carrier revenues are sufficient to cover carrier costs and earn adequate profits.

VERIFICATION

I, Scott Edwards, declare and verify under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to submit this statement.

Dated: 3-31-05



(Signature)